

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** May 26, 2004

**To:** The Commission  
(Meeting of May 27, 2004)

**From:** Alan LoFaso, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject: SB 1488 (Bowen) Public Utilities Commission: public  
information**  
As Amended April 26, 2004

**Legislative Subcommittee Recommendation:** Oppose.

**Summary:** This bill would amend Public Utilities Code section 583 to shift the burden on confidentiality matters by requiring specific Commission action to withhold specified information from the public rather than a Commission order to disclose specified information to the public.

**Digest:** Existing law, P.U. Code sec. 583, prohibits making public specified information provided by public utilities to the Commission, unless ordered by the Commission or made public by the Commission or a Commissioner in the course of a hearing or proceeding. Existing law further provides that disclosure by Commission staff of utility information that is non-public is a misdemeanor.

Existing law, Government Code sec. 6250 et seq., the “California Public Records Act” (PRA), governs access to public records. Existing law, Government Code sec. 6254(k), exempts records prohibited from disclosure from state law from the PRA’s requirements. Further existing law, Government Code sec. 6276.36, exempts public utilities’ confidential information, pursuant to P.U. Code sec. 583, from the requirements of the PRA, as provided for in Government Code sec. 6254(k).

Pursuant to P.U. Code sec. 583 and the PRA, the Commission adopted General Order (G.O.) 66-C, which provides that any records deemed “public records” under the PRA are public records unless specified in G.O. 66-C or any other Commission order, decision, or rule. G.O. 66-C provides *inter alia* that “[r]eports, records and information requested or required by the Commission which, if revealed, would place the regulated

company at an unfair business disadvantage” are confidential and not open to public inspection. (G.O. 66-C, sec. 2.2(a).)

This bill would provide that specified information provided by public utilities may not be withheld from the public, except by order of the Commission or by a Commissioner in the course of a hearing or proceeding or if that information would be exempt from disclosure under the PRA.

This bill would further provide that the Commission may designate categories of information as confidential, if it finds, according to a balancing test, that confidentiality serves the public interest.

This bill would further provide that its provisions do not authorize disclosure of information that is exempt from the PRA.

**Analysis:** SB 1488 is intended to increase the public's access to information provided to the Commission by public utilities by providing that disclosure, rather than non-disclosure, is the default option for information provided by public utilities. Under SB 1488, the Commission would in most cases have to take affirmative action to limit disclosure, either through a Commission order, or through action by the Commission or a Commissioner in the course of a hearing or proceeding.

The scope of SB 1488 would include all information provided to the Commission, including evidence in specific proceedings, as well as routine filings provided by various utilities and information submitted in response to data requests from the Commission.

Commission rules (G.O. 66-C) already prescribe matters that are public records and those that are confidential, pursuant to authority granted under Section 583. Moreover, G.O. 66-C provides a process to seek records from the Commission (G.O. 66-C, sec. 3), including a process of appealing to the full Commission to seek access to records that have been withheld from public inspection (sec. 3.4). This process applies to any information, including routine filings and any other utility-specific data held by the Commission.

In the context of proceedings, Resolution ALJ-164 establishes a law and motion procedure to hear discovery disputes. When a discovery motion is granted, parties (including other parties in the proceeding) may inspect the information for purposes of the proceeding but cannot further disclose it. The inspecting party must sign a non-disclosure agreement for that purpose.

This process allows information that, if revealed, would place the regulated company at an unfair business disadvantage to be examined without creating the potentially anti-competitive results of full disclosure that would not serve the public interest if such a document were deemed a public record.

Concerns have been expressed that Commission staff may have difficulty in obtaining propriety utility information, if the default rule is that the information would be open to public inspection.

Additionally, the issue of confidentiality of electric utility information has been expressed regarding the Commission's procurement proceeding. In its most recent order (D. 04-01-050), the Commission stated (at p. 178):

Since issuance of the April 4 [2003] Ruling,<sup>1</sup> parties have continued to voice concern over the amount of information that is shielded from public review. We also recognize that the Legislature, particularly the Senate Energy, Utilities and Communications Committee, has taken a strong interest in this subject and has pressed this Commission to expand the amount of utility resource planning and procurement data that is made publicly available, and to ensure that the public has meaningful access to the Commission's decision-making. In light of this ongoing concern and in an effort to promote the widest possible dialogue on utility planning matters in California, we will again revisit our approach to the treatment of confidential information in our new Procurement OIR. Our intent is to broaden the scope of information embedded in utility resource plans that can be made public.

In D. 04-01-050, the Commission directed parties to comment whether making public data that has been made public in other states would disadvantage California ratepayers. In its new procurement rulemaking (R. 04-04-003), the Commission expressed its intent to expand the scope of utility planning data that is made public, specifying that all product, price, and availability information contained in utilities' procurement-related applications submitted to the Commission be public information. A revised ruling in this proceeding is expected soon.

### Conclusion

SB 1488's shift of the burden in favor of public disclosure is broad and not fully determined. Current law regarding both Section 583 and the PRA provide a balance that defers to the Commission the task of balancing the public interest of disclosure. Moreover, current law grants the Commission the opportunity to review the matter with regard to specific information or types of information, exactly as the Commission has done in G.O. 66-C.

The breadth of information that could be open to public inspection may cause a chilling effect in terms of utilities' willingness to provide information to staff of the Commission to fulfill the Commission's responsibilities.

The Commission retains the authority to address this issue, as it is currently doing with procurement information, without any change in existing law.

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<sup>1</sup> The April 4, 2003 Ruling from ALJs Allen and Walwyn adopted guidelines governing the scope of information that shall be considered confidential in the utility's long-term plans filings.

## **LEGISLATIVE HISTORY**

Sen. Judiciary: 4-2 (do pass) (4/20/04)  
Sen. E.U.&C.: 5-1 (do pass as amended) (3/23/04)

## **SUPPORT/OPPOSITION**

Support: Clean Power Campaign; Environment California.

Opposition: AT&T; California Association of Competitive Telecommunications Companies; California Cable & Telecommunications Association; Pac West; SBC California; Sprint Communications Company.

## **LEGISLATIVE STAFF CONTACT**

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**Date:** May 26, 2004

**BILL LANGUAGE:**

BILL NUMBER: SB 1488    AMENDED  
BILL TEXT

AMENDED IN SENATE    APRIL 26, 2004  
AMENDED IN SENATE    MARCH 30, 2004

INTRODUCED BY    Senator Bowen

FEBRUARY 19, 2004

An act to amend Section 583 of the Public Utilities Code, relating to the Public Utilities Commission.

LEGISLATIVE COUNSEL'S DIGEST

SB 1488, as amended, Bowen. Public Utilities Commission: public information.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities. Every public utility is required to furnish such reports as the commission may require. No information furnished to the commission by a public utility, except those matters specifically required to be open to public inspection, are open to public inspection or made public except by order of the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any information in violation of these provisions is guilty of a misdemeanor.

This bill would provide that all information furnished to the commission by a public utility, except those matters specifically required to be closed to public inspection, are open to public inspection and may not be withheld from public inspection except by order of the commission or a commissioner in the course of a hearing or proceeding. The bill would authorize the commission to order that certain categories of information be confidential if the commission finds that the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure. The bill would further provide that any present or former officer or employee of the commission who divulges information made confidential by the commission is guilty of a misdemeanor.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 583 of the Public Utilities Code is amended to read:

583. (a) All information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be closed to public inspection by this part, shall be open to public inspection and may not be withheld from public inspection except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding.

(b) The commission may, by order, designate certain categories of information as confidential, if it finds that the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(c) Any present or former officer or employee of the commission who divulges information made confidential by the commission is guilty of a misdemeanor.

(d) Nothing in this section ~~requires~~  
*authorizes* disclosure of information that is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).